



General Assembly

Amendment

February Session, 2006

LCO No. 4132

HB0520904132HDO

Offered by:

REP. SPALLONE, 36th Dist.

REP. WALKER, 93rd Dist.

REP. HAMM, 34th Dist.

To: Subst. House Bill No. 5209

File No. 482

Cal. No. 322

"AN ACT CONCERNING YOUTHFUL OFFENDER PROCEEDINGS."

1 Strike lines 1 to 276, inclusive, in their entirety and substitute the
2 following in lieu thereof:

3 "Section 1. Subdivision (2) of section 54-76b of the 2006 supplement
4 to the general statutes is repealed and the following is substituted in
5 lieu thereof (*Effective from passage*):

6 (2) "Youthful offender" means a youth who (A) is charged with the
7 commission of a crime which is not (i) a class A felony or a violation of
8 subdivision (2) of subsection (a) of section 53-21 or section 53a-70, 53a-
9 70a, 53a-70b, 53a-71, 53a-72a or 53a-72b, except a violation involving
10 consensual sexual intercourse or sexual contact between the youth and
11 another person who is thirteen years of age or older but under sixteen
12 years of age, or (ii) a violation of section 53a-172 or 53a-173 where the
13 charge for which the defendant is alleged to have failed to appear is (I)
14 one for which the defendant has been determined to be ineligible to be

15 adjudged a youthful offender or has been transferred to the regular
16 criminal docket of the Superior Court, or (II) a violation of probation or
17 conditional discharge under section 53a-32, and (B) has not previously
18 been convicted of a felony in the regular criminal docket of the
19 Superior Court or been previously adjudged a serious juvenile
20 offender or serious juvenile repeat offender, as defined in section 46b-
21 120, as amended.

22 Sec. 2. Section 54-76c of the 2006 supplement to the general statutes
23 is repealed and the following is substituted in lieu thereof (*Effective*
24 *from passage*):

25 (a) In any case where an information or complaint has been laid
26 charging a defendant with the commission of a crime, and where it
27 appears that the defendant is a youth, such defendant shall be
28 presumed to be eligible to be adjudged a youthful offender and the
29 [court having jurisdiction shall, but only as to the public, order the]
30 court file shall be sealed, but only as to the public, unless such
31 defendant (1) is charged with the commission of a crime which is a
32 class A felony or a violation of subdivision (2) of subsection (a) of
33 section 53-21 or section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or 53a-
34 72b, except a violation involving consensual sexual intercourse or
35 sexual contact between the youth and another person who is thirteen
36 years of age or older but under sixteen years of age, (2) is charged with
37 a violation of section 53a-172 or 53a-173 and the charge for which the
38 defendant is alleged to have failed to appear is (A) one for which the
39 defendant has been determined to be ineligible to be adjudged a
40 youthful offender or has been transferred to the regular criminal
41 docket of the Superior Court, or (B) a violation of probation or
42 conditional discharge under section 53a-32, or [(2)] (3) has been
43 previously convicted of a felony in the regular criminal docket of the
44 Superior Court or been previously adjudged a serious juvenile
45 offender or serious juvenile repeat offender, as defined in section 46b-
46 120, as amended. [Except as provided in subsection (b) of this section,
47 upon] Upon motion of the prosecuting official, the court may order
48 that an investigation be made of such defendant under section 54-76d,

49 as amended by this act, for the purpose of determining whether such
50 defendant is ineligible to be adjudged a youthful offender, provided
51 the court file shall remain sealed, but only as to the public, during such
52 investigation.

53 (b) [(1)] Upon motion of the prosecuting official and order of the
54 court, the case of any defendant who is a youth and is charged with
55 the commission of a felony, other than a felony set forth in subsection
56 (a) of this section, [shall] may be transferred from the youthful
57 offender docket to the regular criminal docket of the Superior Court. [,
58 provided the court finds that there is probable cause to believe the
59 defendant has committed the act for which he or she is charged. The
60 defendant shall be arraigned in the regular criminal docket of the
61 Superior Court by the next court business day following such transfer,
62 provided] The court file shall remain sealed until such motion is
63 decided by the court and any proceedings held prior to the finalization
64 of such transfer shall be private and shall be conducted in such parts of
65 the courthouse or the building wherein court is located as shall be
66 separate and apart from the other parts of the court which are then
67 being held for proceedings pertaining to adults charged with crimes.
68 [The file of any case so transferred shall remain sealed until the end of
69 the tenth working day following such arraignment, unless the
70 prosecuting official has filed a motion pursuant to subdivision (2) of
71 this subsection, in which case such file shall remain sealed until the
72 court makes a decision on the motion.

73 (2) A prosecuting official may, not later than ten working days after
74 such arraignment, file a motion to transfer the case of any defendant
75 who is a youth and is charged with the commission of a felony, other
76 than a felony set forth in subsection (a) of this section, from the regular
77 criminal docket of the Superior Court to the youthful offender docket
78 for proceedings in accordance with the provisions of sections 54-76b to
79 54-76n, inclusive. The court sitting for the regular criminal docket of
80 the Superior Court shall, after hearing and not later than ten working
81 days after the filing of such motion, decide such motion.]

82 Sec. 3. Section 54-76d of the 2006 supplement to the general statutes
83 is repealed and the following is substituted in lieu thereof (*Effective*
84 *from passage*):

85 (a) If the court grants a motion made by the prosecuting official
86 under subsection (a) of section 54-76c, as amended by this act, that the
87 defendant be investigated, or if the court on its own motion determines
88 that the defendant should be investigated under this section, and the
89 defendant consents to physical and mental examinations, if deemed
90 necessary, and to investigation and questioning, and to a trial without
91 a jury, should a trial be had, the information or complaint shall be held
92 in abeyance and no further action shall be taken in connection with
93 such information or complaint until such examinations, investigation
94 and questioning are had of the defendant. [Investigations] Any
95 investigation under this section shall be made by [an adult probation
96 officer] the Court Support Services Division. When the information or
97 complaint charges commission of a felony, [the adult probation officer]
98 such investigation shall include [in the investigation] a summary of
99 any unerased juvenile record of adjudications of the defendant.

100 (b) Upon the termination of such examinations, investigation and
101 questioning, the court, in its discretion based on the severity of the
102 crime, which shall also take into consideration whether or not the
103 defendant took advantage of the victim because of the victim's
104 advanced age or physical incapacity, and the results of the
105 examinations, investigation and questioning, shall determine whether
106 such defendant [is eligible or ineligible to] should be adjudged a
107 youthful offender. If the court determines that the defendant [is
108 eligible to] should be so adjudged, no further action shall be taken on
109 the information or complaint and the defendant shall be required to
110 enter a plea of "guilty" or "not guilty" to the charge of being a youthful
111 offender. If the court determines that the defendant [is ineligible to]
112 should not be so adjudged, [it] the court shall order the information or
113 complaint to be unsealed and the defendant shall be prosecuted as
114 though the proceedings under sections 54-76b to 54-76n, inclusive, as
115 amended, had not been had.

116 (c) If no motion is made by the prosecuting official under subsection
117 (a) or (b) of section 54-76c, as amended by this act, or by the court
118 under subsection (a) of this section, and the defendant consents to a
119 trial without a jury, should a trial be had, no further action shall be
120 taken on the information or complaint and the defendant shall be
121 required to enter a plea of "guilty" or "not guilty" to the charge of being
122 a youthful offender.

123 (d) At any time prior to trial as provided in section 54-76e or at any
124 time prior to entering a plea of "guilty" to the charge of being a
125 youthful offender, the defendant, on motion and with the concurrence
126 of the defendant's parent or guardian and the defendant's attorney, if
127 any, may waive further proceedings under the provisions of sections
128 54-76b to 54-76n, inclusive, as amended, and request a trial by jury in
129 the regular criminal docket of the Superior Court. If the court, after
130 making a thorough inquiry, is satisfied that such waiver is knowingly
131 and voluntarily made, the court may grant such motion and order the
132 information or complaint to be unsealed and the defendant shall be
133 prosecuted as though the proceedings under sections 54-76b to 54-76n,
134 inclusive, as amended, had not been had.

135 (e) [At any point, if] If the court determines at any time during the
136 pendency of the case that a defendant is ineligible to be a youthful
137 offender, the court shall order the information or complaint to be
138 unsealed and the defendant shall be prosecuted as though the
139 proceedings under sections 54-76b to 54-76n, inclusive, as amended,
140 had not been had.

141 Sec. 4. Subsection (b) of section 54-76j of the 2006 supplement to the
142 general statutes is repealed and the following is substituted in lieu
143 thereof (*Effective from passage*):

144 (b) If execution of the sentence is suspended under subdivision (6)
145 of subsection (a) of this section, the defendant may be placed on
146 probation or conditional discharge for a period not to exceed three
147 years, provided, at any time during the period of probation, after

148 hearing and for good cause shown, the court may extend [the period as
149 deemed appropriate by the court] such probation or conditional
150 discharge for a period not to exceed five years, including the original
151 period of probation or conditional discharge. If the court places the
152 person adjudicated to be a youthful offender on probation, the court
153 may order that, as a condition of such probation, the person be
154 referred for services to a youth service bureau established pursuant to
155 section 10-19m, provided the court finds, through an assessment by a
156 youth service bureau or its designee, that the person is in need of and
157 likely to benefit from such services. If the court places a person
158 adjudicated as a youthful offender on probation, the court may order
159 that, as a condition of such probation, the person participate in the
160 zero-tolerance drug supervision program established pursuant to
161 section 53a-39d. If the court places a youthful offender on probation,
162 school and class attendance on a regular basis and satisfactory
163 compliance with school policies on student conduct and discipline
164 may be a condition of such probation and, in such a case, failure to so
165 attend or comply shall be a violation of probation. If the court has
166 reason to believe that the person adjudicated to be a youthful offender
167 is or has been an unlawful user of narcotic drugs, as defined in section
168 21a-240, and the court places such youthful offender on probation, the
169 conditions of probation, among other things, [shall] may include a
170 requirement that such person shall submit to periodic tests to
171 determine, by the use of "synthetic opiate antinarcotic in action",
172 nalline test or other detection tests, at a hospital or other facility,
173 equipped to make such tests, whether such person is using narcotic
174 drugs. A failure to report for such tests or a determination that such
175 person is unlawfully using narcotic drugs [shall] may constitute a
176 violation of probation. If the court places a person adjudicated as a
177 youthful offender for a violation of section 53-247 on probation, the
178 court may order that, as a condition of such probation, the person
179 undergo psychiatric or psychological counseling or participate in an
180 animal cruelty prevention and education program, provided such a
181 program exists and is available to the person.

182 Sec. 5. Section 54-76l of the 2006 supplement to the general statutes
183 is repealed and the following is substituted in lieu thereof (*Effective*
184 *from passage*):

185 (a) The records or other information of a [youth, other than a youth
186 arrested for or charged with the commission of a crime which is a class
187 A felony or a violation of subdivision (2) of subsection (a) of section 53-
188 21 or section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or 53a-72b,
189 except a violation involving consensual sexual intercourse or sexual
190 contact between the youth and another person who is thirteen years of
191 age or older but under sixteen years of age] youthful offender,
192 including fingerprints, photographs and physical descriptions, shall be
193 confidential and shall not be open to public inspection or be disclosed
194 except as provided in this section, but such fingerprints, photographs
195 and physical descriptions submitted to the State Police Bureau of
196 Identification of the Division of State Police within the Department of
197 Public Safety at the time of the arrest of a person subsequently
198 adjudged, or subsequently presumed or determined to be eligible to be
199 adjudged, a youthful offender shall be retained as confidential matter
200 in the files of the bureau and be opened to inspection only as provided
201 in this section. Other data ordinarily received by the bureau, with
202 regard to persons arrested for a crime, shall be forwarded to the
203 bureau to be filed, in addition to such fingerprints, photographs and
204 physical descriptions, and be retained in the division as confidential
205 information, open to inspection only as provided in this section.

206 (b) The records of any [such youth] youthful offender, or any part
207 thereof, may be disclosed to and between individuals and agencies,
208 and employees of such agencies, providing services directly to the
209 youth, including municipal, state and federal law enforcement
210 officials, state and federal prosecutorial officials, school officials in
211 accordance with section 10-233h, court officials, the Division of
212 Criminal Justice, the Court Support Services Division, the Board of
213 Pardons and Paroles and an advocate appointed pursuant to section
214 54-221 for a victim of a crime committed by the [youth] youthful
215 offender. Such records shall also be available to the attorney

216 representing the [youth] youthful offender, in any proceedings in
217 which such records are relevant, to the parents or guardian of such
218 [youth] youthful offender, until such time as the [youth] youthful
219 offender reaches the age of majority or is emancipated, and to the
220 [youth] youthful offender upon his or her emancipation or attainment
221 of the age of majority, provided proof of the identity of such [youth]
222 youthful offender is submitted in accordance with guidelines
223 prescribed by the Chief Court Administrator. Such records disclosed
224 pursuant to this subsection shall not be further disclosed.

225 (c) The records of any [such youth] youthful offender, or any part
226 thereof, may be disclosed upon order of the court to any person who
227 has a legitimate interest in the information and is identified in such
228 order. Records or information disclosed pursuant to this subsection
229 shall not be further disclosed.

230 (d) The records of any [such youth] youthful offender or any part
231 thereof, shall be available to the victim of the crime committed by such
232 [youth] youthful offender to the same extent as the record of the case
233 of a defendant in a criminal proceeding in the regular criminal docket
234 of the Superior Court is available to a victim of the crime committed by
235 such defendant. The court shall designate an official from whom such
236 victim may request such information. Information disclosed pursuant
237 to this subsection shall not be further disclosed.

238 (e) Any reports and files held by the Court Support Services
239 Division regarding any [such youth] youthful offender who served a
240 period of probation may be accessed and disclosed by employees of
241 the division for the purpose of performing the duties contained in
242 section 54-63b.

243 (f) Information concerning any [such youth] youthful offender who
244 has escaped from an institution to which such [youth] youthful
245 offender has been committed or for whom an arrest warrant has been
246 issued may be disclosed by law enforcement officials.

247 (g) The information contained in and concerning the issuance of any

248 protective order issued in a case [in which a person is presumed or
249 determined to be eligible to be adjudged] involving a youthful
250 offender shall be entered in the registry of protective orders pursuant
251 to section 51-5c, as amended, and may be further disclosed as specified
252 in said section.

253 (h) The provisions of this section, as amended by public act 05-232
254 and this act, apply to offenses committed after January 1, 2006, and do
255 not affect any cases pending on said date or any investigations
256 involving offenses committed prior to said date."